

Examiner-Initiated Interview Summary	Application No.	Applicant(s)
	10/603,525	MILLER, STEWART C.
Examiner	Art Unit	
Francis T. Palo	3644	

All Participants:

(1) Francis T. Palo.

Status of Application: Pending

(3) _____.

(2) Ms. Sarah M. Jabbari.

(4) _____.

Date of Interview: 30 December 2004

Time: morning

Type of Interview:

Telephonic
 Video Conference
 Personal (Copy given to: Applicant Applicant's representative)

Exhibit Shown or Demonstrated: Yes No

If Yes, provide a brief description:

Part I.

Rejection(s) discussed:

Provisional Obvious Type Double Patenting over allowed related US 10/180,690

Claims discussed:

1-63 of instant CIP

Prior art documents discussed:

JP 4190714A and US 4,594,809

Part II.

SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:

See Continuation Sheet

Part III.

It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.
 It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

(Examiner/SPE Signature)

(Applicant/Applicant's Representative Signature – if appropriate)

Continuation of Substance of Interview including description of the general nature of what was discussed: Applicant's Representative was contacted to discuss the disposition of the instant claims directed to the allowed subject matter of the allowed '690 parent application, and that a Provisional Obviousness Type Double Patenting rejection was anticipated in both the allowed application and the instant application. The Applicant's Representative was given the opportunity to provide a Terminal Disclaimer with the issue fee of the allowed '690 application, and/or redress the claims of the instant application to include one of the remaining species of the allowed '690 application..

Francis T. Palo
EXAMINER

RECEIVED
CENTRAL FAX CENTER

JAN 06 2005

BAKER DANIELS

Fax 132:

100 North Meridian Street, Suite 2700 Indianapolis, Indiana 46204-1742 317.237.0300 Fax 317.237.1000 www.bakerdaniels.comIndiana
Washington, DC
China

Facsimile Cover Letter

CONFIDENTIALITY NOTICE: THE MATERIALS IN THIS FACSIMILE TRANSMISSION ARE PRIVATE AND CONFIDENTIAL AND ARE THE PROPERTY OF THE SENDER. THE INFORMATION CONTAINED IN THE MATERIAL IS PRIVILEGED AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL(S) NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE ADVISED THAT ANY UNAUTHORIZED DISCLOSURE, COPYING, DISTRIBUTION OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS MATERIAL IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE TO ARRANGE FOR RETURN OF THE FORWARDED DOCUMENTS TO US.

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

Name: Examiner Francis T. Palo, U.S. Patent and Trademark Office

FAX Telephone No.: (703) 872-9306

From: Sarah M. Jabbari

Date: January 6, 2005

Comments:

APPROVED
FP 1/13/05

Return To: Jean Melloy (21S-k)

Total number of pages, including cover letter: 7A hard copy of this transmission will be sent by regular mail. will be sent via overnight mail.x will not be sent under separate cover.

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL THE
FAX DEPARTMENT AT (317) 237-1100
AS SOON AS POSSIBLE.**

INMAN2 547917v1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
CENTRAL FAX CENTER

JAN 06 2005

Appl. No. : 10/603,525 Confirmation No. 4113
Applicant : Stewart C. Miller
Filed : June 25, 2003
TC/A.U. : 3643
Examiner : Francis T. Palo

Docket No. : SMLR-002-01
Customer No. : 27268

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRELIMINARY AMENDMENT AND INTERVIEW SUMMARY

Sir:

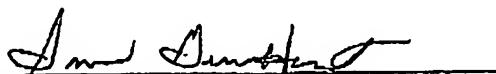
In response to an interview with Examiner Palo on December 30, 2004, Applicant submits the following preliminary amendment and interview summary. Applicant respectfully requests entry of this amendment prior to the calculation of fees and the meritorious examination of the application.

Amendments to the Claims are reflected in the listing of claims which begins on page 1 of this paper.

Remarks/Arguments begin on page 6 of this paper.

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office (Fax No. (703)872-9306) on January 6, 2005.

Typed or printed name of person signing this certificate



Susan G. Hurst

Appl. No. 10/603,525
Preliminary Amdt. dated January 6, 2005

REMARKS/ARGUMENTS

1. Interview with the Examiner.

In an interview with Examiner Palo on December 30, 2004, Examiner Palo indicated to Applicant's Representative (Kevin Erdman) that the claims of the present application, as originally filed, presented double patent concerns relevant to the pending and allowed parent application Ser. No. 10/180,690. Applicant's Representative and Examiner Palo agreed that Applicant would submit a proposed amendment canceling all of the claims of the present application and presenting new claims that avoid the double patenting concerns. A proposed amendment was submitted on January 6, 2005. In a follow up interview with Examiner Palo on January 6, 2005, Examiner Palo indicated that the proposed amended claims avoided a double patenting issue.

2. Amendments to the Claims.

Accordingly, Applicant hereby cancels all of original claims 1-63 and requests entry of new claims 64-78. Claims 64-78 are drawn to a process for cultivating *Morchella* sclerotia, rather than *Morchella* ascocarp. Each of claims 64-78 require the step of harvesting the sclerotia by removing the sclerotia prior to the formation of an ascocarp. This step precludes inducing the formation of an ascocarp, which is required in the allowed claims of the parent application and, thus, the practice of the present invention would not conflict with the claims of the parent application. Accordingly, the newly presented claims do not present a double patenting issue. These new claims are fully supported in the present application in paragraph [0040].

CONCLUSION

Applicant respectfully request that the Examiner maintain the Notice of Allowance in the parent case and approve the proposed amendments made herein in the present application.

Applicant believes that no fees are due in connection with this submission, however, if any fees are necessary, please charge Deposit Account No. 02-0390, Baker & Daniels.

Respectfully Submitted,

By:


Sarah M. Jabbari, Reg. No. 47,679
Baker & Daniels
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204
Phone: (317) 237-0300
Fax: (317) 237-1000
E-mail: smjabbar@bakerd.com

Appl. No. 10/603,525
Preliminary Amdt. dated January 6, 2005

Amendments to the Claims:

The following listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claims 1-63 (Cancelled)

64. (New) A process for cultivating *Morchella sclerotia* using mycelium and a tree seedling, the process comprising the steps of:

inoculating a root system of the tree seedling with the mycelium to produce an inoculated tree seedling;

distressing a shoot system of the inoculated tree seedling, said step of distressing the shoot system causing at least a portion of the root system to dye and stimulating the formation of sclerotia from the mycelium in the dying root system; and

harvesting the sclerotia by removing the sclerotia prior to the formation of an ascocarp.

65. (New) The process of claim 64 further comprising the step of cultivating the mycelium by the steps of:

introducing spores onto a culture medium; and

incubating the spores until the spores produce the mycelium.

66. (New) The process of claim 65 wherein said step of inoculating the root system with the mycelium comprises:

introducing the root system of the tree seedling into the culture medium; and

Appl. No. 10/603,525
Preliminary Amdt. dated January 6, 2005

incubating the culture medium until the mycelium has inoculated the root system.

67. (New) The process of claim 65 wherein said step of inoculating the root system with the mycelium comprises:

adding a planting medium on top of the culture medium;
placing at least one tree seed on top of the planting medium;
germinating the tree seed into the tree seedling; and
growing the tree seedling until the root system is inoculated with the mycelium.

68. (New) The process of claim 64 further comprising the step of cultivating the mycelium by the steps of:

introducing a plurality of spores into a container of culture medium;
placing the container of culture medium in a planting medium;
covering the culture medium and the planting medium with a germinating medium; and
incubating the spores until the spores produce the mycelium.

69. (New) The process of claim 68 wherein said step of inoculating the root system with the mycelium comprises:

placing at least one tree seed in the germinating medium;
germinating the tree seed into the tree seedling; and
growing the tree seedling until the root system is inoculated with the mycelium.

70. (New) The process of claim 64 wherein said step of inoculating the root system comprises:

Appl. No. 10/603,525
Preliminary Amdt. dated January 6, 2005

introducing spores onto a culture medium;
introducing a tree seed into a planting medium;
simultaneously incubating the spores and the tree seed until the spores produce the mycelium and the tree seed germinates into the tree seedling;
placing the tree seedling on the culture medium; and
incubating the culture medium until the mycelium has inoculated the root system.

71. (New) The process of claim 64 wherein said step of inoculating the root system with the mycelium comprises injecting the mycelium into the tree seedling.

72. (New) The process of claim 64 wherein said step of inoculating the root system with the mycelium comprises grafting a portion of an inoculated tree seedling onto the tree seedling.

73. (New) The process of claim 64 wherein said step of inoculating the root system with the mycelium comprises growing the tree seedling in close proximity to an inoculated tree.

74. (New) The process of claim 64 further comprising the step of growing the inoculated tree seedling for at least one growing season.

75. (New) The process of claim 64 wherein said step of distressing a shoot system comprises severing the shoot system from the root system.

Appl. No. 10/603,525
Preliminary Amdt. dated January 6, 2005

76. (New) The process of claim 64 wherein said step of distressing a shoot system comprises defoliating the tree.

77. (New) The process of claim 64 wherein the shoot system of the tree seedling comprises leaves and said step of distressing a shoot system comprises smothering the leaves.

78. (New) The process of claim 64 wherein distressing the shoot system of the tree seedling comprises allowing sclerotia to develop for at least one growing season after distressing the shoot system.